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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

BART ALAN DEANE,

Defendant and Appellant.

D061699

(Super. Ct. No. SCE306152)

APPEAL from a judgment of the Superior Court of San Diego County, Gary M. Bubis, Judge. Affirmed.

Appellant Bart Alan Deane was charged with felony transportation of methamphetamine (count 1) in violation of Health and Safety Code section 11379, subdivision (a) with special enhancements alleged pursuant to Health and Safety Code section 11370.2, subdivision (c) and Penal Code sections 1203.07, subdivision (a) (11) and 1210, subdivision (a), and felony possession of methamphetamine for sale (count 2) in violation of Health and Safety Code section 11378 with special enhancements pursuant

to Health and Safety Code section 11370.2, subdivision (c) and Penal Code section 1203.07, subdivision (a) (11). Counts 3 and 4 alleged misdemeanor offenses. It was further alleged Deane suffered prior prison terms.

Deane entered pleas of not guilty to counts 1 and 2 and denied the special enhancement allegations. He entered guilty pleas to counts 3 and 4. He admitted the prior prison terms. The court found the enhancements on counts 1 and 2 to be true. Thereafter, Deane was found guilty by a jury of count 1, and on count 2 he was found guilty of the lesser included offense of felony possession of methamphetamine.

On count 1 Deane was sentenced to the middle term of three years in prison and a consecutive term of five years for the enhancements, for a total prison term of eight years, plus fines and fees. Imposition of the sentence for possession of methamphetamine was stayed pursuant to Penal Code section 654. He was credited with 132 days.

DISCUSSION

Deane's appointed counsel has filed a brief setting forth the underlying facts and procedural history. Presenting no argument for reversal, counsel asks this court to review the record for error in accordance with *People v. Wende* (1979) 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396], counsel refers to the following possible but not arguable issues: did defense counsel prejudicially err by conceding in closing argument that Deane was guilty of count 1 and the lesser included offense in count 2, did the sentencing court abuse its discretion in sentencing Deane? We granted Deane permission to file a brief on his own behalf. He did not respond.

We have reviewed the entire record pursuant to *People v. Wende, supra*, 25 Cal.3d 436 and considered the possible issues raised by counsel. We find no reasonably arguable appellate issue. The record shows there was strong evidence Deane transported and possessed methamphetamine. Counsel focused instead on the element of sale alleged in count 2, arguing to the jury that while there was possession and transportation, there was no evidence Deane was engaged in selling methamphetamine. Her argument was successful. We find counsel was competent. Nor do we find the trial court abused its discretion in sentencing Deane to the middle term and in addition applying enhancements.

We also conclude Deane has been represented by competent counsel on appeal.

DISPOSITION

The judgment is affirmed.

BENKE, Acting P. J.

WE CONCUR:

HALLER, J.

IRION, J.